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APPELLANT PRO SE:

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ATTORNEYS FOR APPELLEE:

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Deputy Attorney General  
Indianapolis, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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DOUGLAS BULLOCK	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 55A01-0612-PC-536
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Respondent.	)	

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APPEAL FROM THE MORGAN SUPERIOR COURT  
The Honorable G. Thomas Gray, Judge  
Cause No. 55D01-0610-PC-331

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**August 28, 2007**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BRADFORD, Judge**

Douglas Bullock appeals from the summary denial of his petition for post-conviction relief (“PCR”). We affirm.

## **FACTS**

On April 21, 2004, the State charged Bullock with Class B felony dealing in cocaine, Class B felony dealing in a Schedule III controlled substance, Class D felony cocaine possession, Class D felony maintaining a common nuisance, and Class A misdemeanor paraphernalia possession. Later in 2004, the State filed a total of three civil forfeiture actions against Bullock, for property related to the criminal charges. As a result of the actions, the State eventually seized a motorcycle, a red Chevrolet, a GMC recreational vehicle, a mobile home, and a Pontiac Trans Am.

On March 23, 2005, the trial court sentenced Bullock to ten years of incarceration following his guilty plea to one count of dealing in cocaine as a Class B felony.<sup>1</sup> On October 6, 2006, Bullock filed a PCR petition. On November 13, 2006, without holding a hearing, the post-conviction court denied Bullock’s PCR petition in full. Bullock now appeals.

## **DISCUSSION AND DECISION**

### **Standard of Review**

Our standard for reviewing the denial of a PCR petition is well-settled:

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<sup>1</sup> Ind. Code § 35-48-4-1 (2004). Although the trial court’s sentencing order and abstract of judgment indicate that Bullock was convicted of Class D felony dealing in cocaine, this is clearly a scrivener’s error. First, dealing in cocaine cannot ever be a Class D felony; it is always at least a Class B felony. *See* Ind. Code § 35-48-4-1. Second, the ten-year sentence Bullock received could not have been imposed following just a Class D felony conviction. Third, Bullock himself agrees that he pled guilty to a Class B felony in his PCR petition. Finally, the plea agreement indicates that Bullock was to plead guilty to Class B felony dealing in cocaine.

In reviewing the judgment of a post-conviction court, appellate courts consider only the evidence and reasonable inferences supporting its judgment. The post-conviction court is the sole judge of the evidence and the credibility of the witnesses. To prevail on appeal from denial of post-conviction relief, the petitioner must show that the evidence as a whole leads unerringly and unmistakably to a conclusion opposite to that reached by the post-conviction court.... Only where the evidence is without conflict and leads to but one conclusion, and the post-conviction court has reached the opposite conclusion, will its findings or conclusions be disturbed as being contrary to law.

*Hall v. State*, 849 N.E.2d 466, 468, 469 (Ind. 2006) (internal citations and quotations omitted).

### **I. Double Jeopardy**

Bullock essentially argues that prohibitions against double jeopardy bar his conviction by virtue of the civil forfeiture actions brought against him arising from the incident that forms the basis of his conviction. Because he pled guilty, however, Bullock cannot now claim that his conviction violates double jeopardy. “[D]efendants who plead guilty to achieve favorable outcomes in the process of bargaining give up a plethora of substantive claims and procedural rights.” *Games v. State*, 743 N.E.2d 1132, 1135 (Ind. 2001). Among the substantive claims that are waived are that the conviction(s) violate double jeopardy. *See Mapp v. State*, 770 N.E.2d 332-334-35 (Ind. 2002) (concluding that defendants who plead guilty waive the right to challenge convictions on double jeopardy grounds). Because Bullock pled guilty, he cannot now challenge his conviction on double jeopardy grounds.

## II. Ineffective Assistance of Trial Counsel

We review claims of ineffective assistance of counsel based upon the principles enunciated in *Strickland v. Washington*, 466 U.S. 668 (1984):

[A] claimant must demonstrate that counsel's performance fell below an objective standard of reasonableness based on prevailing professional norms, and that the deficient performance resulted in prejudice. Prejudice occurs when the defendant demonstrates that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." A reasonable probability arises when there is a "probability sufficient to undermine confidence in the outcome."

*Grinstead v. State*, 845 N.E.2d 1027, 1031 (Ind. 2006) (quoting *Strickland*, 466 U.S. at 694).

Bullock's claim, essentially, is that his trial counsel was ineffective in failing to raise any double jeopardy claim based on the prior civil forfeiture actions brought against him. Bullock's trial counsel cannot have been ineffective for failing to raise such an objection (nor could Bullock have been prejudiced), because any such objection would have failed. We have repeatedly held that civil *in rem* forfeiture actions, like the ones at issue here, do not constitute "punishment" and therefore do not create double jeopardy problems with respect to criminal charges related to the same property. *See \$100 & a Black Cadillac v. State*, 822 N.E.2d 1001, 1008-10 (Ind. Ct. App. 2005), *trans. denied*; *Davis v. State*, 819 N.E.2d 863 N.E.2d 867-70 (Ind. Ct. App. 2004), *trans. denied*; *Willis v. State*, 806 N.E.2d 817, 820-23 (Ind. Ct. App. 2004); *C.R.M. v. State*, 799 N.E.2d 555,

557-61 (Ind. Ct. App. 2003).<sup>2</sup> Because any double jeopardy objection would have been fruitless, Bullock's trial counsel was not ineffective for failing to lodge one.

### **III. Prosecutorial Misconduct**

Bullock claims that the prosecutor committed misconduct both in the related civil forfeiture proceeding and in his criminal proceeding by bringing charges that violated double jeopardy. To the extent that Bullock is attempting to attack the validity of the forfeiture proceedings in this PCR proceeding, he may not do so. Post-conviction relief is available only to those who have "been convicted of, or sentenced for, a crime by a court of this state" and where that conviction or sentence is illegal or otherwise improper. Ind. Post-Conviction Rule 1(1)(a). Quite simply, the post-conviction rules do not provide any way to collaterally attack *any* civil proceeding, even a forfeiture proceeding tangentially related to the criminal proceeding at issue. To the extent that Bullock contends that the prosecutor committed misconduct by filing charges that violated double jeopardy, this claim is likewise without merit. As we concluded above, the charges brought against Bullock did not violate any prohibitions against double jeopardy, and the prosecutor could not, therefore, have committed misconduct by bringing them.

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<sup>2</sup> We acknowledge *State v. Klein*, 702 N.E.2d 771 (Ind. Ct. App. 1998), *trans. denied*, on which Bullock relies, in which another panel of this Court concluded that a forfeiture was punitive in nature and barred subsequent criminal prosecution where the forfeiture did not serve a remedial function. *Id.* At 774-75. As recognized, however, by another panel of this Court in *Willis*, 806 N.E.2d at 822 n.3, the *Klein* court's conclusion was based, in part, on a line of cases that relied upon reasoning from *United States v. Halper*, 490 U.S. 435 (1989). *Halper's* suggestion, however, that a forfeiture must be rationally related to the expenditures of the State was repudiated in *Hudson v. United States*, 522 U.S. 93 (1997), and the *Willis* court therefore declined to follow *Klein*. *Willis*, 806 N.E.2d at 822 n.3. We agree with the *Willis* court in this regard and therefore also decline to follow *Klein*.

#### **IV. Summary Dismissal**

Indiana Post-Conviction Rule 1, Section 4(f) provides that a post-conviction court may summarily deny a petition without further proceedings if “the pleadings conclusively show that petitioner is entitled to no relief[.]” Here, that standard was met. As already explained, all of Bullock’s claims are based on his contention that a prior civil forfeiture action prevents a subsequent criminal prosecution arising from the same event. Also as previously explained, this is simply not the case, as a matter of law. As such, we can conceive of no evidence that Bullock could have presented that would have helped him in this regard. The post-conviction court properly denied Bullock’s petition without a hearing.

The judgment of the post-conviction court is affirmed.

NAJAM, J., and MATHIAS, J., concur